

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREDERICK T. RAY, III	:	CIVIL ACTION
	:	
v.	:	
	:	
D. EDWARD McFADDEN, et al.	:	NO. 03-06184-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

May 31, 2005

After a two-day, non-jury trial, this case is now ready for disposition. My findings of fact and conclusions of law are as follows:

In July of 2003, plaintiff was an inmate of the Chester County Prison, awaiting trial on state criminal charges. On July 17, 2003, plaintiff entered a plea of guilty to those charges, but sentencing was deferred pending receipt of a presentence report. On August 14, 2003, plaintiff filed a motion to withdraw his guilty plea. That motion was granted on September 11, 2003.

In the meantime, on July 28, 2003, without any explanation or advance notice, plaintiff was abruptly transferred from the Chester County Prison to the Curran-Fromhold Correctional Facility (CFC) in Philadelphia. He was brought back to the Chester County Prison for one 24-hour period in mid-August, so that he could appear for a pretrial hearing in his criminal case, following which he was returned to the CFC.

At the time of his transfer, and throughout this period, plaintiff vociferously contended that, since he was acting *pro se* in his criminal case, the transfer to CFC impeded his ability to protect himself in the criminal prosecution. Ultimately, when he filed a petition for a writ of habeas corpus, the state court judge ordered that he be brought back to the Chester County Prison. He was returned to Chester County on October 10, 2003. Plaintiff's criminal trial did not take place until April 2004. Plaintiff represented himself throughout the trial, and was acquitted of all charges.

Unlike sentenced prisoners, prisoners who have not yet been sentenced have a sufficient liberty interest in the selection of their place of confinement to be entitled to a hearing before being transferred to another institution. Cobb v. Aytch, 643 F.2d 946 (3d Cir. 1981); Muslim v. Frame, 854 F. Supp. 1215 (E.D. Pa. 1994). The undisputed evidence in this case establishes that plaintiff was entitled to advance notice and a hearing before being transferred out of the Chester County Prison, and that his due process rights were in fact violated. The remaining issue is whether plaintiff is entitled to recover damages as a result of the violation, and, if so, whether one or more of the defendants are liable for such damages.

It is clear that, as a matter of policy and of regular practice, the officials at the Chester County Prison do not

provide advance notice or hearing before transferring prisoners to other institutions, and that they draw no distinction in that respect between sentenced prisoners and prisoners who have not yet been sentenced or are awaiting trial. In plaintiff's case, the decision to transfer was made by the defendant Edward McFadden, who was the Deputy Warden at the time, and is now the Warden. Plaintiff's *pro se* pleadings can reasonably be interpreted as asserting claims against Warden McFadden in both his official capacity and in his personal capacity. I conclude that, in his official capacity, he is liable to plaintiff for the due process violation. The record is less clear as to the other defendants, since they were not in charge and were merely carrying out the orders of superiors (to the extent that they had any participation at all in the transfer decision).

Plaintiff makes a separate claim based on the First Amendment; he argues that the transfer to CFC was made in retaliation for his having frequently assisted other inmates in pressing grievances and for having, himself, brought one or more civil actions against prison officials. The evidence does not establish that retaliation played any significant role in the transfer decision. Rather, it is clear that the defendants were motivated to carry out the transfer primarily because of plaintiff's abysmal record of misconduct during his stay at the jail. He had been disciplined for assaulting other prisoners,

"trashing" his cell block, and other unacceptable behavior. Indeed, at the time of his transfer, he had not yet completed serving a prescribed period of disciplinary confinement because of a previous violation.

The paperwork compiled by the Prison officials states that the reason for the transfer was "overcrowding," and the transfer documents did not alert CFC to any potential disciplinary problems they might experience after the transfer. I am persuaded that, although the Chester County Prison is, like most county prisons, overcrowded, in this instance overcrowding provided merely a minor reason for transferring plaintiff. Overcrowding gave rise to a justification for reducing the number of prisoners, but the choice of plaintiff to be transferred was primarily attributable to his being perceived as a disciplinary problem. In short, I conclude that plaintiff's First Amendment claim has not been established. The same is true with respect to plaintiff's claim about being continued on restricted status upon being returned to the Chester County Prison on August 20, 2003 and on a permanent basis in October 2003. He was accorded due process in connection with all of his various disciplinary infractions, none of which suffice to warrant an award of damages.

I thus conclude that the only damages plaintiff is entitled to are such damages as are properly attributable to his

reduced ability to prepare for his criminal trial, and the delay, if any, occasioned by that difficulty.

At most, the transfer to CFC contributed to causing a delay of slightly over two months in scheduling his criminal trial. Since plaintiff was acquitted at that trial, it can be argued that he is therefore entitled to damages for having been held in custody for two and one-half months longer than he should have been. But it is by no means clear that the transfer to CFC can be credited with lengthening his confinement by that amount. The record makes clear that plaintiff himself was not in any hurry to face the criminal trial. Having initially pleaded guilty, he no doubt believed that the period of his pretrial confinement would be credited toward any sentence he might receive. Of greater significance is the fact that, after his return to Chester County Prison in October of 2003, he made several applications for postponement of his trial. Some of those requests can probably be attributed to a belief that he was not yet adequately prepared to represent himself at trial, but I am not convinced that his transfer to CFC can be regarded as having totally frustrated his ability to prepare for his trial. At most, it can be regarded as having caused a portion of the (arguable) two-month delay.

Another factor bears mention. Defendants presented evidence which suggests that the delay in his trial actually

benefitted plaintiff by making it much more difficult for the Commonwealth to prove his guilt. The victim of the alleged crime was, at the time, a confidential informant working with the police. By the time the trial occurred, the victim had fallen prey to a crack cocaine habit, and her credibility was severely undermined. While this may be true, I do not believe the defendants in this case are entitled to a reduction of damages on that account.

My ultimate conclusions can be summarized as follows:

(1) plaintiff's due process rights were violated; (2) the defendant McFadden, in his official capacity, is legally liable to plaintiff for that violation; (3) the only compensable damages sustained by plaintiff as a result of the due process violation are those attributable to a portion of the delay in his criminal trial, and the resultant extension of his pretrial confinement; and (4) plaintiff is not entitled to recover damages against the defendants other than Mr. McFadden.

Under all of the circumstances, I conclude that a reasonable approximation of the damages recoverable by plaintiff in this action is the sum of \$500.

An Order follows.

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ORDER

AND NOW, this 31st day of May 2005, IT IS ORDERED:

That JUDGMENT is ENTERED in favor of the plaintiff
Frederick T. Ray, III and against the defendant D. Edward
McFadden, Warden, in his official capacity, in the sum of \$500.

Plaintiff's claims against the remaining defendants are
DISMISSED with prejudice.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.